

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
cr

SPECIAL CIVIL APPLICATION No 3296 of 1985
With
CIVIL APPLICATION NO.1079 OF 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

KENAJI AMTHAJI THAKORE

Versus

BAI SHANTABEN W/O DAHYALAL SOMNATH SHUKLA

Appearance:

Mr.M.D.Rana for the petitioner.

Mr.V.C.Desai for the respondents Nos.1(1) to 1(3)
i.e. LRs. of original respondent No.1.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 20/01/98

ORAL JUDGEMENT

The matter comes up before Court on Civil Application No.1079 of 1991 filed by LRs of original respondent No.1. Mr. Desai appearing on behalf of the respondents Nos.1(1) to 1(3) has submitted that this Special Civil Application arises out of the main Civil Suit No.92 of 1969, re-numbered as Civil Suit No.289 of

1978, in the Court of Civil Judge (J.D.), Gandhinagar. Mr. Desai has further submitted that this Suit had abated in terms of the Court's order dated 28.11.88, the original plaintiff in the Suit had expired on 16.6.88 and his LRs were not brought on record. It is further submitted by Mr.Desai that the original defendant No.1 had also expired and his LRs were also not brought on record. The suit, therefore, stands abated. Mr.Rana appearing on behalf of the petitioner is not in a position to contradict any of the statements made by Mr. Desai, as aforesaid. No reply to this Civil Application has been filed, which is pending since 1991 i.e. for a period of last 6 years. The copy of this Civil Application had also been given to the learned counsel for the petitioner way back in April 1991. Mr. Rana submits that he has been engaged only in October 1997 and, therefore, he should be given time to ascertain the factual position. In my opinion, when the copy of the Civil Application had been given to the learned counsel for the petitioner way back in April 1991 and no reply to this Civil Application had been filed and merely because Mr.Rana had stepped into the shoes of the earlier counsel, there is no justification on his part to ask for time, especially when 3 weeks time had already been granted earlier when the matter came up before the Court. There is no reason to disbelieve any of the statements made by Mr. Desai. Since the Suit itself had abated, this Special Civil Application, arising out of the Reference made in the said Civil Suit, does not survive and can not proceed further. Special Civil Application is, therefore, dismissed. Rule is hereby discharged. No order as to costs.

In view of the order passed in the main Special Civil Application, no orders are required to be passed in the Civil Application. Rule in the Civil Application is also discharged accordingly. No order as to costs.